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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 11.08.2023

+ **W.P.(C) 10672/2023**

E.CONSTRUCT FZ LLC

..... Petitioner

Through: Mr Ruchesh Sinha, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX

CIRCLE INT. TAX. 1(2)(2) & ANR.

..... Respondents

Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Ashvini Kumar and Ms
Madhavi Shukla, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (Oral)

CM Appl.41389/2023

1. Allowed, subject to just exceptions.

W.P.(C) 10672/2023 & CM Appl.41388/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

2.1 Mr Puneet Rai, learned senior standing counsel, accepts notice on behalf of the respondents/revenue.

3. In view of the directions that we intend to pass, Mr Rai says that no counter-affidavit is required to be filed and he will rely on the record presently available with the court.

3.1 Therefore, with the consent of the counsels for the parties, the writ



petition is taken up for final hearing and disposal at this stage itself.

4. *Via* this writ petition, the petitioner/assessee seeks to assail the following notices and order:

- (i) Notice dated 30.03.2023, issued under Section 148A(b) of the Income Tax Act, 1961 [in short, “Act”].
- (ii) Order dated 17.04.2023, passed under Section 148A(d) of the Act.
- (iii) Consequential notice dated 17.04.2023, issued under Section 148 of the Act.

4.1. The abovementioned notices and orders concern AY 2019-20.

5. The principal grievance of the petitioner is that after it was served with the notice dated 30.03.2023 under Section 148A(b) of the Act according time to file a response by 10.04.2023, a communication dated 14.04.2023 was sent to the respondents/revenue, explaining the difficulty in filing the response.

5.1 It is stated that the said difficulty was not taken into account before passing the assessment order dated 17.04.2023 under Section 148A(d) of the Act.

5.2 The difficulty that the petitioner expressed in its communication dated 14.04.2023, was simply this i.e., it had been served with the notice dated 30.03.2023 only on 14.04.2023, and therefore there was no way that the petitioner could file response by 10.04.2023.

6. This aspect of the matter was not taken into account by the Assessing Officer (AO) while passing the order under Section 148A(d) of the Act.

7. According to us, the best way forward would be to set aside the impugned order dated 17.04.2023 passed under Section 148A(d) of the Act,



with liberty to the AO to pass a fresh order.

7.1 It is ordered accordingly.

8. The AO will pass a fresh order after considering the reply which the petitioner has furnished on merits, *via* communication dated 18.04.2023.

8.1 The AO will also accord personal hearing to the authorized representative of the petitioner.

8.2 For this purpose, a notice will be issued to the petitioner, setting out the date and time of hearing.

8.3 Needless to add, the AO will pass a speaking order, a copy of which will be furnished to the petitioner.

9. The writ petition is disposed of in the aforesaid terms. Accordingly, pending interlocutory application shall also stand closed.

10. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 11, 2023/pmc